

FOR THE DISTRICT OF NEW MEXICO

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Plaintiff,

-vs-

No.: 1:16-CV-574

UNITED STATES OF AMERICA,
Defendant

COMPLAINT FOR DAMAGES

COME NOW Plaintiffs, by and through their attorney, Julia Hosford Barnes,
P.C., and for their Complaint against the Defendant, state as follows:

GENERAL ALLEGATIONS

1. Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") is an insurance company duly licensed to do, and at all times material herein, doing, business in the State of New Mexico.
2. Dora McQuitty and Sherman McQuitty (State Farm's Insured) sustained a loss as a result of the accident which forms the basis of this Complaint.
3. Defendant United States (Bureau of Indian Affairs) is governmental entity. Michael Deswood was an employee with the Navajo Nation Fish and Wildlife Program at the time of the accident and was driving on behalf of the Navajo Nation Fish and Wildlife Program.
- 3.a. The Navajo Nation Fish and Wildlife Program is an entity of the federal government and subject to the Federal Tort Claim Act. Pursuant to the Federal Tort

Claim Act, the Navajo Nation Fish and Wildlife Program has waived immunity for certain tort claims, including this claim.

3.b. Plaintiff State Farm has provided a Tort Claim Notice to the Department of Indian Affairs, Bureau of Indian Affairs and the Navajo Nation Risk Management Program on November 19, 2015. More than 6 months have passed since the deliver of that Tort Claim notice, and no response was received from the Department of Indian Affairs, Bureau of Indian Affairs or the Navajo Nation Risk Management Program. Therefore, it is appropriate for Plaintiff to file suit to move this claim forward.

4. At all times material herein, Plaintiff State Farm insured a certain automobile owned by State Farm's Insured against risk of loss.

5. On or about October 28, 2014, a motor vehicle accident occurred in San Juan County, New Mexico between the vehicle owned by State Farm's Insured and a motor vehicle owned and operated by Navajo Nation Fish and Wildlife Program., by and through its employee, Michael Deswood.

5.a. Upon information and belief, the Defendant is responsible for actions of the employees of the business while on duty, including Michael Deswood.

5.b. State Farm's insured was struck by two vehicles during this accident. However, a portion of those damages were attributable to the other driver who struck State Farm's insured. The damages set forth below represent approximately 50% of the damages which Plaintiff believe should be attributed to the Defendant.

6. Venue is proper in this Court pursuant to NMSA Section 38-3-1(A).

DAMAGES

7. As a proximate result of the accident, State Farm's Insured incurred the following damages which are the responsibility of the Defendant as liquidated by State Farm in payment of the claim to its insured:

Damages Incurred by State Farm under its insurance policy

Property Damages and Associated Costs	\$ 10,094.99
Personal Injuries and Medical Expenses	\$ 26,853.86
Subtotal -- State Farm damages	<u>\$ 36,948.85</u>

Damages Incurred by State Farm's insured

Amount not covered by insurance	<u>\$ 250.00</u>
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Total Damages \$ 37,198.85

This amount is the amount that Plaintiff alleges was caused by the impact of the vehicle driven by Michael Deswood and does not include any amount attributable to another driver who also struck State Farm's insured.

8. Upon the rightful demand of State Farm's Insured, Plaintiff State Farm paid its insured the damages as set forth above and is thereby subrogated to that extent against the Defendant.

9. Pursuant to SCRA 1-010(C), Plaintiffs incorporate paragraphs 1 through 8 as if fully set forth within each of the counts set forth below.

COUNT I NEGLIGENCE - UNITED STATES BUREAU OF INDIAN AFFAIRS

10. On or about October 28, 2014, Michael Deswood negligently operated a motor vehicle which caused damage to State Farm's Insured. The Defendant ran a red light and struck State Farm's insured.

11. The negligence of Michael Deswood was the proximate cause of the damages suffered by Plaintiffs.

COUNT II – NEGLIGENCE PER SE- UNITED STATES BUREAU OF INDIAN AFFAIRS

12. Michael Deswood was negligent per se in that Michael Deswood violated sections of the New Mexico Statutes Annotated 1978, as amended, as well as city ordinances regarding legal duties in the operation of a motor vehicle while on public streets. Among other laws, Michael Deswood was inattentive to the rules of the road and violated NMSA 66-7-104 by failing to obey the traffic signal, running a red light and striking State Farm's insured.

13. The negligence per se of Michael Deswood was the proximate cause of the damages suffered by Plaintiffs.

COUNT III –RESPONDEAT SUPERIOR

14. At all times material herein, the Defendant was the legal entity supporting Navajo Nation Fish and Wildlife Program who employed Michael Deswood..

15. The Defendant is responsible for actions of the employees of the Navajo Nation Fish and Wildlife Program while on duty, including Michael Deswood

COUNT IV AGAINST JOHN DOE

16. Through discovery or otherwise, another party or parties may be identified that have liability in this matter, based in negligence, negligence per se or other tort or through vicarious liability, such as respondeat superior or family purpose doctrine. To the extent that such a party(ies) is identified, the amendment of the Complaint to include such a party will be deemed to relate back to the filing date of this Complaint.

WHEREFORE, Plaintiffs pray for judgment against Defendant in the sum of **\$37,198.85** together with interest at the highest rate allowed by law, the cost of this action, and for such other and further relief as the Court deems just and proper.

JULIA HOSFORD BARNES, P.C.

/s/ Julia Hosford Barnes

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